

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. ²⁸⁸⁷
284

No. 14, SPECIAL CALENDAR.

HERBERT A. HARD, APPELLANT,

vs.

MAURICE SPLAIN, UNITED STATES MARSHAL FOR THE
DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED OCTOBER 8, 1915.

PRINTED NOVEMBER 15, 1915.



Court of Appeals of the District of Columbia.

OCTOBER TERM, 1915.

No. 2887.

No. 14, SPECIAL CALENDAR.

HERBERT A. HARD, APPELLANT,

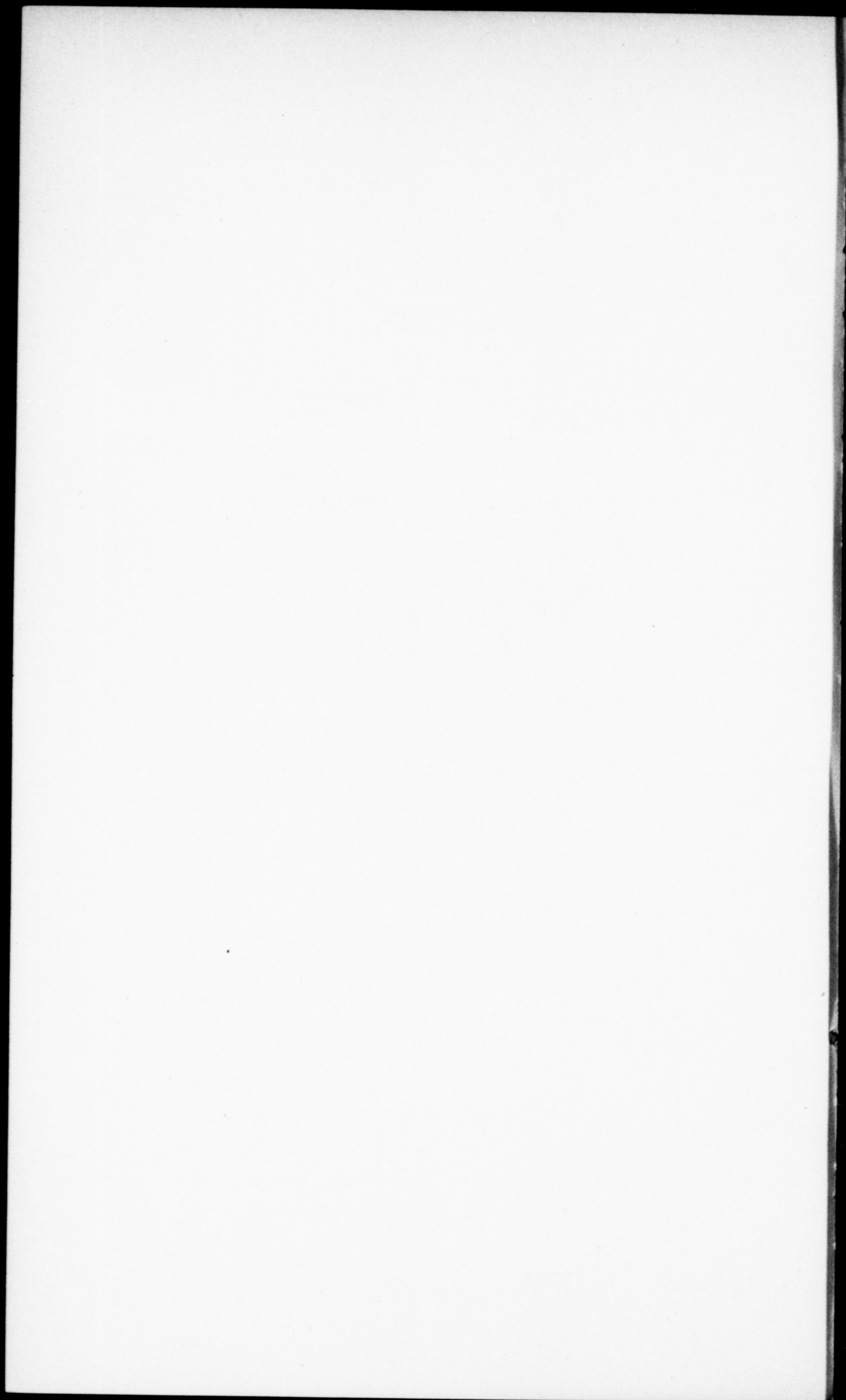
vs.

MAURICE SPLAIN, UNITED STATES MARSHAL FOR THE
DISTRICT OF COLUMBIA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 2887.

HERBERT A. HARD, Appellant,
vs.
MAURICE SPLAIN, &c.

a Supreme Court of the District of Columbia.

No. 625. Habeas Corpus.

In the Matter of the Petition of HERBERT A. HARD for Habeas Corpus.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition.*

Filed May 11, 1915.

In the Supreme Court of the District of Columbia.

No. 625. Habeas Corpus.

In the Matter of the Petition of HERBERT A. HARD for Habeas Corpus.

To the Honorable the Justices of the Supreme Court of the District of Columbia:

Your petitioner, Herbert A. Hard respectfully represents as follows.

1. That he is a citizen of the United States and a resident of the District of Columbia and has been such resident for sometime.

2. That he is now unjustly and illegally held and restrained of his liberty in the said District of Columbia by Maurice Splain,

United States Marshal in and for the District of Columbia by virtue of an alleged demand made by the Governor of the State of Michigan for his conveyance to the said state of Michigan to answer an alleged charge of kidnapping; that there is no color or pretense whatever for his detention.

3. That the facts alleged in said demand made by the Governor of the State of Michigan upon which the requisition is based are not true and he is not a fugitive from justice nor is he guilty of any crime under the laws of the State of Michigan.

4. Your petitioner asserts and charges that the requisition and papers issued by the alleged Governor of the State of Michigan fail to comply with the Constitution of the United States and with Section- 5278 and 5279 of the Revised Statutes of the United States and Section 930 and Section 931 of the Code of Laws for the District of Columbia on the following grounds:

A. That he is not a fugitive from justice from the state of Michigan.

B. That your petitioner was not in the demanding state at the time of the alleged commission of the crime attempted to be set forth in the requisition and there is no evidence before the Chief Justice of the Supreme Court of the District of Columbia nor was there any before the Governor of the State of Michigan to warrant the finding that he was actually in the demanding state at the time of the alleged commission of the crime.

C. That the requisition and papers issued by the Governor of the State of Michigan for extradition in this case and filed herein are not duly and properly authenticated.

D. That there is nothing in the papers to show that the law has been complied with as far as the issuance of a warrant by a Magistrate is concerned; that there is nothing to show that — Clements is a Magistrate; nor is there any verification to show that he is authorized to certify or take oaths.

E. There is no certification that there is a warrant nor is the paper properly sworn to.

F. There is no certification or authentication that affidavits are proper or correct.

G. There is no crime charged under the laws of the State of Michigan nor is there substantially a crime charged.

H. The requisition is signed by the Deputy Secretary of State and there is nothing to show any authorization for the delegation of such power; that the papers were certified by an Assistant Attorney General and there was nothing to show that in either of these instances they were authorized or delegated to sign the requisition for the Michigan Law requires in both of these instances that they shall be signed by the Governor and the Attorney General.

I. There is no allegation anywhere in the requisition that your respondent is a fugitive from justice nor is there any averment in the supporting affidavits that he is a fugitive from justice.

K. That this is an attempt on the part of the State of Michigan

to interfere in family affairs and private matter- between man and wife.

That for the above and other reasons your petitioner prays as follows:

That this Honorable Court will direct to issue a Writ of Habeas Corpus returnable forthwith agreeable to the Code of Laws of the District of Columbia against Maurice Splain United States Marshal in and for the District of Columbia, or any one acting for him, in whose custody your petitioner may be found, or any one in whose custody your petitioner may be found, that cause may be shown if any exists why he should not be discharged and set free immediately and be freed of his illegal and unlawful detention; that he is held without legal warrant or authorization and should be immediately released and discharged.

HERBERT A. HARD.

CITY OF WASHINGTON,
District of Columbia:

I, Herbert A. Hard, being first duly sworn on oath depose and say that I have read the foregoing petition by me subscribed and know the contents thereof; that the facts therein stated on my personal knowledge are true and those stated on information and belief I believe to be true.

HERBERT A. HARD.

4 Subscribed and Sworn to before me this 11th day of May,
A. D. 1915.

J. R. YOUNG,
Clerk Sup. Ct., D. C.,
By E. J. McKEE, *Ass't Clerk.*

(Endorsed.)

Let the writ issue forthwith returnable May 12th 1915 at 10 o'clock A. M. before me. Bail \$3,000 for release pending hearing.
Dated May 11, 1915.

WALTER I. McCOY, *Justice.*

Writ of Habeas Corpus.

Issued May 11, 1915.

* * * * *

The President of the United States to Maurice Splain, U. S. Marshal,
Greeting:

You are commanded to have the body of Herbert A. Hard detained under your custody, as it is said, together with the day and cause of his being taken and detained, by whatever name he may be called in the same, before the Honorable Walter I. McCoy one of the Justices of the Supreme Court of the District of Columbia, in Equity

Court No. 1 United States Court-House, City of Washington, on the 12th day of May, 1915, at 10 o'clock A. M., after the receipt of this writ, to do and receive whatever shall then and there be considered of in his behalf, and have then and there this writ.

Witness, The Honorable J. Harry Covington, Chief Justice of said Court, the 11th day of May, A. D. 1915.

[SEAL.]

J. R. YOUNG, *Clerk*,
By F. W. SMITH,
Assistant Clerk.

Marshal's Return.

Service hereof accepted May 11, 1915.

MAURICE SPLAIN,
U. S. Marshal,
By W. B. ROBISON,
Deputy U. S. Marshal, D. C.

Return of Respondent.

Filed May 29, 1915.

* * * * *

The respondent, Maurice Splain, United States Marshal for the District of Columbia, upon whom the writ of habeas corpus in the above entitled cause has been served, states that he is unable now to bring into court the body of the said Herbert A. Hard, as commanded by the said writ of habeas corpus, for the reason that the said petitioner was, on the — day of May, 1915, admitted to bail upon order of this Honorable Court, conditioned for his future appearance before this Court.

For cause why the said Herbert A. Hard, petitioner, was taken into custody and detained by this respondent, he says that the said petitioner was duly arrested by this respondent on a warrant issued by the Chief Justice of the Supreme Court of the District of Columbia, on the 10th day of May, 1915, a copy of which warrant is hereto annexed and made and prayed to be read and considered as a part hereof, in the proceedings entitled In re the State of Michigan vs. Herbert A. Hard, numbered 396 on the Requisition Docket of the Supreme Court of this Court, the said proceedings having been instituted upon a duly authenticated requisition from the Governor of the State of Michigan upon the Chief Justice of the Supreme Court of the District of Columbia, for the surrender of said petitioner; that

6 said requisition is based upon a valid complaint and warrant of a magistrate of the State of Michigan, charging petitioner with the crime of wilfully, maliciously and without lawful authority carrying Elizabeth Hard out of said State against her will, for a more particular description of which requisition and the accompanying papers this respondent refers to and makes a part hereof the records of the said requisition proceedings.

And having answered fully this respondent prays that the said writ of habeas corpus may be dismissed and that he be discharged, with his reasonable costs.

MAURICE SPLAIN,
United States Marshal for the District of Columbia,
 By W. B. ROBISON,
Chief Deputy Marshal.

United States Attorney, D. C.

DISTRICT OF COLUMBIA, *To wit:*

I, Maurice Splain, do solemnly swear that I am the United States Marshal for the District of Columbia, and that I have read the foregoing return by me subscribed; that the statements therein made as of my personal knowledge are true and those made upon information and belief I believe to be true.

MAURICE SPLAIN,
U. S. Marshal,
 By W. B. ROBISON,
Deputy Marshal.

Subscribed and sworn to before me this 29th day of May, 1915.

JOHN R. YOUNG, *Clerk,*
 By J. A. C. PALMER, *Ass't "*

7

Copy.

Warrant of Arrest.

Issued May 10, 1915.

Before the Chief Justice of the Supreme Court of the District of Columbia, the 10th Day of May, 1915.

No. 396, Requisition Docket.

In re THE STATE OF MICHIGAN
 vs.
 HERBERT A. HARD.

The President of the United States to the United States Marshal for the District of Columbia, Greeting:

The Governor of the State of Michigan having made demand upon the Chief Justice of said Court for the delivery to George H. Southerland, Agent of said State, of Herbert A. Hard, charged in the County of Saginaw in said State, with the crime of Wilfully, Maliciously, and without lawful authority carrying Elizabeth Hard out of this State against her will, and who, as it is alleged, has fled from the justice of said State and taken refuge in this District; therefore, if he be at large, you are hereby commanded immediately to ar-

rest and bring him or if he be already in custody, to bring him, together with this writ, before the Chief Justice of the Supreme Court of said District, at the United States Court House in the City of Washington, then and there to be dealt with according to law.

Witness:

J. HARRY COVINGTON,
Chief Justice.

By order of the Chief Justice.

Test:

[SEAL.] J. R. YOUNG, *Clerk,*
By F. W. SMITH,
Assistant Clerk.

8

Marshal's Return.

"Cepi" And in Court, May 11, 1915.

MAURICE SPLAIN,
U. S. Marshal.

R.

Requisition.

Filed May 10, 1915.

No. 396. Requisition.

IN re STATE OF MICHIGAN
vs.
HERBERT A. HARD.

State of Michigan, Executive Department.

Woodbridge N. Ferris, Governor in and over the State of Michigan, to the Chief Justice of the Supreme Court of the District of Columbia:

Whereas, It appears by complaint and warrant which are hereunto annexed, and which I certify to be authentic and duly authenticated, in accordance with the laws of this State, that Herbert A. Hard stands charged with the crime of wilfully, maliciously and without lawful authority carrying Elizabeth Hard out of this State against her will which I certify to be a crime under the laws of this State, committed in the County of Saginaw in this State, and it having been represented to me that he has fled from the justice of this State and may have taken refuge in the District of Columbia;

Now therefore, Pursuant to the provisions of the Constitution and the Laws of the United States, in such case made and provided, I do hereby require that the said Herbert A. Hard be
9 apprehended and delivered to George H. Southerland who is hereby authorized to receive and convey him to the State of Michigan, there to be dealt with according to law. The State to be

liable for no expense incurred in the pursuit and arrest of said fugitive.

In witness whereof, I have hereunto set my hand, and caused the Great Seal of the State to be affixed at Lansing, this 4th day of May in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States of America the one hundred and thirty-ninth.

WOODBIDGE N. FERRIS.

By the Governor:

[SEAL.] COLEMAN C. VAUGHAN,
Secretary of State,

By GEO. L. LUSK,
Deputy Secretary of State.

State of Michigan, Office of the Attorney General.

To His Excellency the Governor.

SIR: After examining the annexed application for requisition for Herbert A. Hard and the accompanying documents thereto attached, I respectfully submit that, in my judgment, such application is in due form, and complies with all the requirements of law.

LELAND W. CARR,
Ass't Attorney General.

Dated at the Capitol, Lansing, Michigan, May 4, 1915.

10 This application and accompanying papers must be in duplicate.

Application for Requisition.

Inter-state.

To Woodbridge N. Ferris, Governor in and over the State of Michigan:

The undersigned, Prosecuting Attorney for the county of Saginaw in said State, respectfully applies for a requisition upon the Chief Justice of the Supreme Court of the District of Columbia for the arrest and rendition of* HERBERT A. HARD late of said county, and therein charged in due form of law with the crime of Wilfully, maliciously and without lawful authority carrying Elizabeth Hard out of this state against her will.

The undersigned designates* GEORGE H. SUTHERLAND to receive such requisition, and certifies that the said GEORGE H. SUTHERLAND agent, has no private interest in the arrest of such fugitive, and is a proper person for such agency.

The undersigned further certifies, that in his opinion the ends of public justice require that the said HERBERT A. HARD alleged

*The names of fugitive and agent must be in Roman capital letters, e. g., JOHN DOE.

criminal be brought to this State for trial at the public expense; that he believes he has sufficient evidence to secure his conviction; that this application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted the criminal proceedings shall not be used for any of said objects; that this is the first application that has been made for a requisition for the said HERBERT A. HARD for the offense named or on any charge arising out of the same facts.†

11 Accompanying this application are duly certified copies of proofs on which the‡ Complaint against the said HERBERT A. HARD was § filed and also a certified copy of the said Complaint also of affidavits showing the connection of the said HERBERT A. HARD with the above crime and his presence in this State at the time such offense was committed, and of his having been found in the District of Columbia where now supposed to be.

Dated, May third, A. D. 1915.

BIRD J. VINCENT,
Prosecuting Attorney of Saginaw County.

Reference is hereby made to statutes of Michigan bearing upon the alleged offense.

Sec. 11, 494 Comp. Laws of Mich.

STATE OF MICHIGAN,
County of Saginaw, ss:

The complaint, on oath and in writing of Katherine Hard, taken and made before me, A. Clements, Justice of the Peace of the City of Saginaw, in said county, upon the 21st day of April, A. D. 1915, who being duly sworn says that heretofore, to-wit: on the 18 day of February, A. D. 1915, at the City of Saginaw, in the County aforesaid, one Herbert A. Hard, late of the City of Saginaw, in the County and State aforesaid, wilfully, maliciously and without lawful authority did forcibly carry one Elizabeth Hard out of the State of Michigan against her will, within the meaning of Section 11494 of the Compiled Laws of Michigan of 1897, contrary to the form of

the Statute in such case made and provided, and against the peace and dignity of the People of the State of Michigan,
12 wherefore the said Katherine Hard prays that the said Herbert A. Hard may be apprehended and held to answer this complaint, and further dealt with in relation to the same as law and justice may require.

KATHERINE HARD.

†If application has been made before for such person for same offense, explanation should be given.

‡Complaint or Information.

§Issued or Filed.

Taken, subscribed and sworn to before me this 21st day of April, A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace.

STATE OF MICHIGAN,
County of Saginaw, ss:

I, Arthur Clements, Justice of the Peace in and for the City of Saginaw, in said county and state, do hereby certify that the foregoing is a true, exact and compared copy of the complaint taken and made before me of Katherine Hard, wherein one Herbert A. Hard is charged with the felony of wilfully, maliciously and without lawful authority, carrying one Elizabeth Hard out of this state, and of the whole of said complaint.

Dated this 3rd day of May, A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace of the City of Saginaw, Michigan.

Criminal Warrant.

STATE OF MICHIGAN,
County of Saginaw, ss:

To the Sheriff or any Constable of said County or to the Chief of Police or any Member of the Police Force of the City of Saginaw in said County, Greeting:

Whereas, Katherine Hard hath this day in writing and on oath made complaint to me, Arthur Clements Justice of the Peace of the City of Saginaw, in said County, that heretofore, to-wit: on the 18th day of February A. D. 1915, at the City of Saginaw in the County aforesaid one Herbert A. Hard, late of the City of
13 Saginaw, in the County and state aforesaid, wilfully, maliciously and without lawful authority, did forcibly carry one Elizabeth Hard out of the State of Michigan against her will, within the meaning of Section 11494 of the Compiled Laws of Michigan of 1897,

And whereas, on examination on oath of the said Katherine Hard by me, the said Justice of the Peace, it appears to me, the said Justice of the Peace, that said offense has been committed, and that there is just cause to suspect the said Herbert A. Hard to have been guilty thereof; therefore,

In the name of the people of the State of Michigan, you and each of you are hereby commanded forthwith to take the said Herbert A. Hard and bring him *him* before me, the said Justice of the Peace, to be dealt with according to law.

Given under my hand and seal, at the City of Saginaw, in said County, on the 21st day of April A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace.

STATE OF MICHIGAN,
County of Saginaw, ss:

I, Arthur Clements, Justice of the Peace in and for the City of Saginaw, in said county and state, do hereby certify that the foregoing is a true, exact and compared copy of the warrant heretofore issued by me for the arrest of one Herbert A. Hard, for the offense therein stated, and of the whole of said warrant.

Dated this 3rd day of May, A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace of the City of Saginaw, Michigan.

14 STATE OF MICHIGAN,
County of Saginaw:

Katherine Hard of the City of Saginaw, County of Saginaw and State of Michigan, being first duly sworn deposes and says that she was formerly the wife of Herbert A. Hard, the respondent in this matter, and that she is the mother of said Elizabeth Hard, and said Herbert A. Hard is the father of said Elizabeth Hard, who is now of the age of seven years.

This affiant further shows that herself and said respondent formerly lived as husband and wife at Fargo, North Dakota, where said respondent was a Professor of Geology in the North Dakota Agricultural College at Fargo, North Dakota. This affiant shows that she was raised and all of her family have lived at the City of Saginaw, where she now makes her home. Something over two years ago, after a long period of domestic trouble and infelicity which had arisen between these parties, owing to the extreme and repeated cruelty of the respondent practiced towards this affiant and their three children, it became absolutely necessary for this affiant to seek a separate home from said respondent, and this affiant took up her home with her mother in the City of Saginaw, Michigan, and had with her — that time their three children, including the above named Elizabeth Hard. About six months later, or about the month of October, A. D. 1913, this affiant and said respondent entered articles of separation, a true copy of which is hereto attached as Exhibit "A." including agreements with respect to the support of and maintenance of this affiant and their three children, which said articles and agreement contained a stipulation absolutely placing the custody, care, control, education and company of all of said children, including said Elizabeth Hard with this affiant at her home in Saginaw, Michigan; That this arrangement and definite written stipulation in said articles of agreement was acceded to by said respondent Herbert A. Hard, and the same was signed and executed by him voluntarily, and he thereafter left the city of Saginaw and made his home apart from this affiant, who remained with her said children in Saginaw, as above stated.

15 This affiant further shows that on the 18th day of February, A. D. 1915, in the City of Saginaw, Michigan, aforesaid, that the above named Elizabeth Hard left her home as usual to go to school, which is some distance from the home, in the City of Saginaw, and that

this affiant has not seen said child since that time; that she has made certain investigations and from said investigations she knows the following facts to be true; that a few minutes after said child left the home, said Herbert A. Hard, the respondent, and a Burns Detective, and a chauffeur riding in an automobile came into the vicinity of this affiant's home, but not to it, and as said child was passing along the street, the child was walking with a neighbor of this affiant named Alma Schmeisser, and that as they were passing along the side walk, said respondent alighted from the automobile and after arguing some time regarding his right to take the child, he grabbed her, she screaming, and took her into the automobile and drove away; that further investigation showed that he went from Saginaw to Durand, Michigan, in said automobile and from there took the cars and went out of the State of Michigan into the State of Ohio.

This affiant further shows that at the time that said child was so stolen as above set forth, that no steps had been taken and no action of any kind had occurred whereby to make the above agreement with respect to the custody of said child any less valid, 16 binding or in force than it had always theretofore been, but that the same agreement was then in full force and effect.

She further says that she understands said respondent Herbert A. Hard had secured a divorce from this affiant at Fargo, North Dakota, by publication, and she further shows that he never even attempted to make service in said divorce case upon her so as to get any jurisdiction over her person or that of any of said children.

KATHERINE HARD.

Subscribed and sworn to before me this 3rd day of May, A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace.

EXHIBIT "A."

This agreement made and entered into this 8th day of October, 1913, by and between Herbert A. Hard of the City of Fargo, North Dakota, and Katherine M. Hard of the City of Saginaw, Michigan, witnesseth as follows:

Whereas the above named parties are husband and wife, and troubles of a domestic nature have arisen between them, whereby it is impossible for them to longer live together as husband and wife, and it is the mutual desire of the said parties to settle and adjust the matter of the support and maintenance by the said Herbert A. Hard of his said wife and three minor children, it is therefore hereby agreed as follows:

It is understood that the custody of said minor children shall be and remain in the mother, said Katherine M. Hard, until they shall respectively attain the age of twenty-one (21) years, and she shall have full charge and control over said children, their care 17 and education, until they each shall arrive at the age of twenty-one years. That said children shall be permitted to

so remain with their said mother in the City of Saginaw, Michigan, which place shall be deemed and considered their legal residence unless changed by their said mother, and the said Herbert A. Hard agrees to care for and support them in said City of Saginaw, or elsewhere in the manner hereinafter provided.

The said Herbert A. Hard in consideration of the premises hereby agrees to deed to his said wife all his right, title and interest in and to the home of the said parties in the City of Fargo, in the State of North Dakota, and has this day executed to her a deed of conveyance thereof.

In addition to the above, the said Herbert A. Hard is to pay his said wife the sum of Sixty Dollars (\$60.00) per month for the care, support and maintenance of herself and the three children, said payments to commence on the first day of October, 1914, and to be made on the first day of each and every month thereafter until the youngest of said three children shall arrive at the age of twenty-one years, said monthly payments to be made by the said Hard to Archibald McMillan, an attorney at law of the City of Bay City, Michigan, or to such other person as the said Katherine M. Hard may afterwards direct.

Upon the youngest child arriving at the age of twenty-one years, the sixty-dollars (60.00) monthly payment above referred to shall cease, and the said Hard shall pay to his wife for her support and maintenance the sum of Thirty Dollars (30.00) per month thereafter, on the first day of each month as aforesaid, during her natural life, unless she shall marry, in which event said Hard it to be relieved from making such payment, and shall in no way be obliged
18 to contribute to her support or maintenance.

In the event of the death of any of the children during their minority, the said payment above specified shall be reduced at the rate of Fifteen Dollars (15.00) per month for each child who shall die during such time.

During the minority of said children, it is hereby understood and agreed that their father, the said Herbert A. Hard shall have the right to see and visit them at their home in the City of Saginaw, or elsewhere, not to exceed ten times in any one year, provided said Hard shall give his wife notice in advance as to the times that he desires to so visit his children.

It is further agreed between the parties hereto that upon the sale of the said home this day deeded by said Hard to his wife, that his said wife shall pay him from the proceeds thereof the sum of Two Hundred Dollars (200.00).

It is expressly understood and agreed that this agreement shall in no way be affected in the event that either of the parties thereto shall obtain at any time from the other a decree of divorce, but that said payments shall continue after the granting of such a decree the same as before.

The furniture now remaining in their home at Fargo is to belong to and be the property of said Hard, and the property removed therefrom and shipped to Saginaw shall be the property of the said Katherine Hard.

The intent hereof is not to settle or adjust the property rights of the parties hereto, but simply to adjust and determine the obligations upon the part of the said Hard for the actual support and maintenance of his wife and children.

19 It is understood that interest at the rate of five per cent (5%) per annum from this date shall be paid by the said Katherine Hard upon the said sum of Two Hundred (\$200.00) Dollars to be paid to her husband upon the sale of their Fargo property. The purpose of this provision relative to the payment of the said Two Hundred Dollars (\$200.00) is to compensate the said Hard for a payment upon the mortgage of said property of the sum of Two Hundred Dollars, which he claims to have made, thereby decreasing said mortgage to the sum of Twenty-eight Hundred Dollars (2800.00) it also being understood that interest on said mortgage is paid to October 1, 1913.

It is further agreed that Mrs. Hard shall notify her husband as to the general health, condition and welfare of their children as often as once in every two weeks, and in the case of the sickness of any of the children, shall keep him posted as to their condition and progress. Said children shall be permitted to write to their father at any time they see fit, and the father shall be permitted to write them whenever he sees fit, which said communication shall be handed to the children after being read by the mother.

It is understood further that the mother shall request and direct her children to keep in touch with their father from time to time, and shall in no way prevent them from writing to their father when they shall desire.

In Witness Whereof the parties have affixed their names the day and year first above written.

HERBERT A. HARD.
KATHERINE HARD.

In presence of
LLOYD T. CRANE.
GERTRUDE SMALLING.

20 STATE OF MICHIGAN,
County of Saginaw, ss:

Alma Schmeisser of the City of Saginaw, County of Saginaw, State of Michigan, being first duly sworn, deposes and says, that she is a near neighbor of Mrs. Katherine Hard, and is well acquainted with her, and also well acquainted with her child Elizabeth Hard, and has been for some time.

She further shows that on the morning of the 18th day of February, A. D. 1915 she saw Elizabeth Hard, the child above named coming out of her own home on her way to school; that this affiant walked along with said Elizabeth Hard for about a block and a half when she was suddenly accosted by a man who had just stepped out of a limousine car, with a chauffeur at the wheel. This man spoke to Elizabeth, and after some conversation said that he was the father of Elizabeth and that his name was Mr. Hard, and that he wanted Elizabeth to go with him, first he said to the drug store where he would buy her

something. This affiant however, refused to allow him to take Elizabeth without first seeing Mrs. Hard, and walked along with said Mr. Hard and Elizabeth, during which time he was arguing with her and insisting upon taking the child. Finally an automobile came abreast of where this affiant and the other parties were walking on the side walk, and said Hard picked up said child and carried her into the automobile, and at the same time the child was screaming and yelling the words "I don't want to go." The automobile then drove off and this affiant ran to the home of Mrs. Hard and told her what had occurred. In taking the child her hat fell off on the side walk and this affiant carried the hat home to the child's mother when she went to tell her of the stealing of the child.

ALMA SCHMEISSER.

21 Subscribed and sworn to before me this 3rd day of May,
A. D. 1915.

ARTHUR CLEMENTS,
Justice of the Peace, Saginaw, Michigan.

STATE OF MICHIGAN,
County of Saginaw, ss:

George H. Sutherland of the City of Saginaw, in said county and state, being first duly sworn, deposes and says that he is Sheriff in and for the County of Saginaw, said state, and as such has had placed in his hands a warrant for the arrest of Herbert A. Hard, issued out of the Court of Arthur Clements, Justice of the Peace in and for the City of Saginaw, and that he has communicated with the Chief of Police of the City of Washington in the District of Columbia, and that he is in receipt of a telegram dated the 2nd day of May, A. D. 1915, from said Chief of Police of Washington D. C. in which he is informed that the said Herbert A. Hard is now in the said City of Washington, in the District of Columbia.

GEORGE H. SUTHERLAND.

Subscribed and sworn to before me this 3rd day of May, A. D. 1915.

ARTHUR CLEMENTS.
Justice of the Peace of the City of Saginaw.

STATE OF MICHIGAN,
County of Saginaw, ss:

I, Leopold L. Pearson of the City of Saginaw in said county and state, do hereby certify that I am County Clerk, and Clerk of the Circuit Court in and for the County of Saginaw, in said state,
22 and do hereby further certify that Arthur Clements is the Justice of the Peace in and for the City of Saginaw, in said county and state, duly elected, duly qualified and acting as such, and that the present term of office under which the said Arthur Clements is now acting commenced on the 4th day of July, A. D. 1911, and will terminate on the 3rd day of July, A. D. 1915, and that the

said Justice of the Peace is empowered by the laws of the State of Michigan to receive and take complaints for criminal offenses occurring within the county of Saginaw, and to issue his warrant thereupon, and further that I am familiar with the signature of the said Arthur Clements, and have examined his several signatures to the certificate of copy of complaint, certificate of copy of warrant, affidavit of Katherine Hard, affidavit of Alma Schmeisser, affidavit of George H. Sutherland and affidavit of Bird J. Vincent, and that the same are each the true signature of the said Arthur Clements, Justice as aforesaid.

Given under my hand and the seal of the Circuit Court for the County of Saginaw, at the City of Saginaw, this 3rd day of May, A. D. 1915.

[SEAL.]

L. L. PEARSON,
County Clerk.

STATE OF MICHIGAN,
County of Saginaw, ss:

I, Leopold L. Pearson, of the City of Saginaw in said county and state, do hereby certify that I am County Clerk, and Clerk of the Circuit Court in and for the County of Saginaw, said State, and do hereby further certify that Bird J. Vincent is the Prosecuting Attorney in and for the County of Saginaw in said State, duly
23 elected, duly qualified and acting as such, and that the present term of office under which the said Bird J. Vincent is now acting commenced on the 1st day of January, A. D. 1915, and will terminate on the 31st day of December, A. D. 1916, and that I am familiar with the signature of said Bird J. Vincent and that his signature attached to the application for extradition herewith, and the affidavit made a part thereof, is the true signature of the said Bird J. Vincent, Prosecuting Attorney as aforesaid.

Given under my hand, and the seal of the Circuit Court for the County of Saginaw, at the City of Saginaw, this 3rd day of May, A. D. 1915.

[SEAL.]

L. L. PEARSON,
County Clerk.

STATE OF MICHIGAN,
County of Saginaw, ss:

I, William G. Gage, of the City of Saginaw, said County and State, do hereby certify that I am one of the Circuit Judges of the Circuit Court in and for the county of Saginaw, said State, which is a Court of general jurisdiction, having a seal, and do hereby further certify that Leopold L. Pearson is the County Clerk and Clerk of the said Circuit Court in and for the County of Saginaw, duly elected, duly qualified and acting as such, and that the present term of office under which the said Leopold L. Pearson is now acting commenced on the 1st day of January, A. D. 1915, and will terminate on the 31st day of December, A. D. 1916.

27 Whereupon the petitioner by his counsel filed a motion to discharge petitioner from custody, which motion was considered by the Court and overruled; to which action of the Court, the petitioner excepted. Thereupon counsel for the petitioner announced that the petitioner elected to stand upon the demurrer and motion above named, and declared that he would not traverse the return. Whereupon the Court ordered that the writ of habeas corpus heretofore granted in this case be discharged; that the petition be dismissed, and that the petitioner be remanded to the custody of the Marshal, in accordance with the warrant affixed to the return of the Marshal in this cause. The petitioner gave notice of intention to appeal to the Court of Appeals, and on motion of counsel for petitioner, the Court affixed a bail bond of three thousand dollars (\$3,000), and a cost bond of one hundred dollars (\$100) on the appeal, with leave to the petitioner in lieu of such bond to deposit with the Clerk of the Court the sum of fifty dollars in cash.

WALTER I. McCOY, *Justice*.

Memoranda.

June 1, 1915.—Recognizance \$3,000.00 with Wm. W. Stewart as surety taken and filed.

June 24, 1915.—Bond for costs \$100 on appeal approved and filed.

Assignment of Errors.

Filed July 7, 1915.

* * * * *

28 The petitioner having appealed to the Court of Appeals from the judgment entered herein on the first day of June, A. D. 1915, hereby assigns the following as errors.

The Court erred:

1. In holding that the complaint legally sets forth a crime against the laws of the State of Michigan.
2. In holding that the complaint sets forth a crime against the laws of the State of Michigan.
3. In holding that the alleged charge or crime was an extraditable offense.
4. In overruling the demurrer.
5. In dismissing the petition and remanding the petitioner into the custody of the respondent.
6. In overruling the Motion to Dismiss the petitioner and discharge him from the custody of the defendant Splain.
7. By overruling the Motion to dismiss the petitioner, the Court denied the petitioner the right to have an issue of fact tried.
8. The overruling of the Motion to Dismiss raised an issue of fact in the case and the failure to sustain the Motion denied the petitioner the right to have the facts tried.

9. In refusing to discharge the petitioner.
10. And for other errors apparent on the face of the proceedings.

JAMES A. O'SHEA,
RUFUS S. DAY,
Att'ys.

Service of the above acknowledged this 7th day of July, A. D. 1915.

JAMES B. ARCHER,
Ass't U. S. Att'y.

29

Memorandum.

July 15, 1915.—Time to file transcript of record extended to and including September 1, 1915.

Designation of Record.

Filed July 15, 1915.

* * * * *

The appellant, Herbert A. Hard, by his attorney, James A. O'Shea, hereby designates the following parts of the record to be included in the Transcript of Record to be filed in the Court of Appeals.

1. The Petition.
2. The Writ of Habeas Corpus.
3. The Return made to the above writ by Maurice Splain, United States Marshal, D. C.
4. The Requisition in Cause No. 396.
5. The Demurrer of the petitioner to the return.
6. The Motion to Dismiss the petitioner and to discharge him.
7. Judgment of June 3rd, overruling the demurrer, dismissing the petition, remanding the petitioner and the noting of an appeal.
8. Memo. of recognizance on Appeal.
9. Memo. of Appeal Bond for costs.
10. Assignment of Errors.
11. This Designation of Record.

JAMES A. O'SHEA,
Attorney for the Petitioner.

August 25, 1915.—Time to file transcript of record extended to and including October 8, 1915.

30

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to

29, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, In the Matter of the Petition of Herbert A. Hard, for Habeas Corpus, No. 625, Habeas Corpus, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 24th day of August, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2887. Herbert A. Hard, appellant, vs. Maurice Splain, &c. Court of Appeals, District of Columbia. Filed Oct. 8, 1915. Henry W. Hodges, clerk.

